

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2040

H. P. 1958

Office of the Clerk of the House

The Committee on Natural Resources Suggested. Approved for introduction by the Legislative Council pursuant to Joint Rule 24.

EDWIN H. PERT, Clerk

Presented by Mr. Drinkwater of Belfast

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Regulate Hazardous Materials and Wastes and to Provide for a Uniform Response System to Hazardous Materials Emergencies.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 25 MRSA § 2441, as last amended by PL 1975, c. 771, § 265, is repealed.

Sec. 2. 25 MRSA § 2441-A is enacted to Read:
§2441-A. Hazardous Materials; regulations

1. Commissioner of Public Safety; authority. The Commissioner of Public Safety shall make, amend or rescind, after public hearing thereon, reasonable rules and regulations for the possession, storage, handling or transportation of hazardous materials. "Hazardous material" means a substance or material in quantity and form which may pose an unreasonable risk to health and safety or property and which is designated a hazardous material pursuant to the Hazardous Materials Transportation Act, 49 USC § 1801 et seq. For purposes of this section only, hazardous materials shall not include pesticides subject to the Maine Pesticide Control Act of 1975, Title 7, section 601 et seq.

2. Rules and regulations. Rules and regulations issued pursuant to this section shall not conflict with the provisions of the Hazardous Substances Labeling Act, Title 7, section 501 et seq., and shall be consistent with and no less protective of public safety than the rules and regulations promulgated by the Federal Government with respect to the transportation of hazardous materials.

3. Exception. This section shall not apply to the purchase, sale, transportation or storage

of smokeless powder in amounts not in excess of 15 pounds, or primers not in excess of 1,000 in number.

4. Rules and regulations; enforcement. The commissioner shall:

A. Have power to enforce the rules and regulations through the use of department staff or others pursuant to cooperative agreement; and

B. Have power to enter into cooperative agreements with agencies of Maine and other states and of the Federal Government in relation to enforcement of the rules and regulations.

5. Fees. The commissioner may promulgate a schedule of fees applicable to inspections and permits required by rule and regulation under this section.

6. Violation. Any person who in fact possesses, stores, handles or transports any hazardous material in any quantity or manner, except as prescribed in the regulations shall be deemed to have committed a civil violation for which a forfeiture not to exceed \$5,000 may be adjudged. All such articles may be seized by any peace officer and forfeited, and within 20 days after the seizure may be libeled according to law. Cities and towns may make and enforce reasonable ordinances or bylaws, not inconsistent with the rules and regulations.

Sec. 3. 29 MRSA § 959, as last amended by PL 1975, c. 731, § 48, is repealed and the following enacted in its place:

§959. Trucks carrying hazardous materials or wastes

All vehicles used for the transportation of hazardous materials, as defined in Title 25, section 2441-A, or hazardous wastes, as defined in Title 37-A, section 73, subsection 1, paragraph D, in bulk, whether loaded or empty, shall come to a full stop before crossing any unattended or unautomated railroad grade crossing, the stop to be made at a point not more than 50 feet and not less than 10 feet from the nearest rail. The operator of the vehicle failing to so stop shall be guilty of a Class E crime.

Sec. 4. 37-A MRSA § 73 is enacted to read:

§ 73. Uniform reporting system for hazardous materials and wastes emergencies

1. Definitions. As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. "Agency" shall mean the Bureau of Civil Emergency Preparedness, Department of Defense and Veterans Services.

B. "Emergency agency" shall mean police, fire, civil emergency preparedness or any other agency or department charged with the responsibility of responding to an accident involving hazardous materials or wastes.

C. "Hazardous material" shall mean a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property and which is designated a hazardous material pursuant to the Hazardous Materials Transportation Act, 49 USC § 1801 et seq.

D. "Hazardous waste" shall mean a solid waste, as defined by 42 USC § 6903 (27) or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

E. "Person" shall mean any individual, firm, company, association, partnership, corporation, joint stock company, trust, estate, municipality, political subdivision or district, their legal representative, agent or assigns.

2. Powers and duties. The agency shall have the following powers and duties:

A. To establish a program for utilization of the state's communication systems for the following purposes:

(1) Accepting telephone reports of incidents involving hazardous materials and wastes;

(2) Relating to the emergency agencies in the vicinity of the incident any information available about the location and type of incident, the nature of the hazardous material or waste involved and any precautions which should be taken in handling the materials or waste; and

(3) Reporting to and coordinate with the other state agencies or departments which might be knowledgeable about the type of accident or the hazardous material or waste involved and with the United States Department of Transportation or Environmental Protection Agency.

B. To provide emergency agencies with all necessary telephone numbers and other communications information that can help them report and respond more quickly to a incident involving a hazardous material or waste; and

C. To provide emergency telephone and other communications information to persons who are involved in the possession, storage, handling or transportation of hazardous materials or the generation, storage, transportation, treatment or disposal of hazardous wastes.

3. Responsibility. It is the responsibility of any person or his employee who owns, leases, operates or controls any facilities or equipment for the possession, storage, handling or transportation of hazardous materials or the generation, storage, transportation, treatment or disposal of hazardous wastes to report to the nearest emergency agency and to the Bureau of Civil Emergency Preparedness the information required by paragraphs A through D in the manner set forth in those paragraphs.

A. That person or employee shall give notice in accordance with paragraph B, at the earliest practicable moment after an incident involving him occurs within the State in which, as a direct result of hazardous materials or wastes:

(1) A person is killed;

(2) A person receives injuries requiring his hospitalization;

(3) Estimated carrier or other property damage exceeds \$5,000;

(4) Fire, breakage, spillage or suspected radioactive contamination occurs involving radioactive material or waste;

(5) Fire, breakage, spillage or suspected contamination occurs involving etiologic agents; or

(6) A situation exists of such a nature that, in the judgment of the person, employee or agent a continuing danger to life exists at the scene of the incident and it should be reported in accordance with paragraph B, even though it does not meet the specific criteria of this subsection.

B. Each notice required by paragraph A shall be given by telephone to the nearest emergency agency and the Bureau of Civil Emergency Preparedness. Each notice shall include the following information:

- (1) Name of the reporter;
- (2) Name and address of the person represented by the reporter;
- (3) Phone number where the reporter can be contacted;
- (4) Date, time and location of the incident;
- (5) The extent of injuries, if any;
- (6) The classification, name and quantity of hazardous materials or wastes involved, if the information is available;
- (7) The type of incident and the nature of hazardous material or waste involvement and whether a continuing danger to life or health exists at the scene; and
- (8) Precautionary measures describing the action to be followed or avoided.

C. In addition to the telephone notice required by paragraph B, the person or employee shall give the same information and any other information which might be useful in responding to the emergency situation to any emergency agency at the scene of the incident.

D. In addition to any notices required in paragraphs A, B and C, that person or employee shall, when required to report an incident pursuant to paragraph A or when there has been any unintentional release of hazardous materials or wastes, report in writing on a form approved by the agency within 15 days of the date of discovery. Reports shall be sent to the agency which shall forward a copy to any other state department or agency which was involved in the response to the incident. The forms devised by the agency for the purposes of this subsection shall be substantially identical to the forms required by regulations promulgated pursuant to the Hazardous Materials Transportation Act, 49 USC § 1801 et seq.

4. Violation. Any person who in fact violates the provisions of subsection 3, paragraphs A to D shall be deemed to have committed a civil violation for which a forfeiture not to exceed \$5,000 may be adjudged for each day of violation.

STATEMENT OF FACT

This bill is designed to increase Maine's regulation of hazardous materials, as currently defined by federal law, to require vehicles carrying these materials or hazardous wastes in bulk to stop at unattended railroad crossings and to provide for a uniform response system to hazardous materials and wastes emergencies.

Section 1 of the bill repeals Title 25, section 2441.

Section 2 of the bill enacts Title 25, section 2441-A and has the effect of increasing the categories of materials subject to regulation by the Commissioner of Public Safety and simplifies the list of regulated activities dealing with hazardous materials. Section 2441-A retains a prior provision of section 2441 pertaining to exemptions for small amounts of smokeless powder and primers.

Sections 1 and 2 of the bill repeal procedures currently covered by the Administrative Procedures Act and enact sections authorizing the commissioner to enter into cooperative agreements and to use personnel to enforce the rules.

Section 2 of the bill allows the commissioner flexibility to provide for fees for inspections and permits of all types of hazardous materials and increases the penalty for violation of the rules for hazardous materials to a maximum of \$5,000 per day.

Section 3 of this bill requires vehicles carrying all types of hazardous materials to stop at certain railroad crossings and makes a violation of the section a Class E crime.

Section 4 of the bill creates a uniform response system for hazardous materials and wastes emergencies. The Bureau of Civil Emergency Preparedness will serve as the coordinating agency in such a response. Telephone reports of incidents are required in certain delineated circumstances, while written reports are required both in those circumstances and whenever there has been an unintentional release of hazardous materials or wastes. Failure to report creates a liability of up to \$5,000 per day.